

Rent Stabilization Association of NYC, Inc. and Office & Professional Employees International Union, Local 153, AFL-CIO and New York State Labor Relations Board. Case AO-232

June 1, 1981

ADVISORY OPINION

A petition and memorandum in support thereof were filed on March 19 and April 6, 1981, respectively, by Rent Stabilization Association of NYC, Inc., herein called the Employer, for an advisory opinion in conformity with Sections 102.98 and 102.99 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, seeking to determine whether the Board would assert jurisdiction over the Employer's operations on the basis of its current jurisdictional standards. On April 6, 1981, the New York State Labor Relations Board, herein called the State Board, filed an opposition urging the Board to decline jurisdiction herein. Thereafter, on April 27, 1981, the Employer filed a response to the State Board's letter urging that the Board reject the letter as untimely because of late service on the Employer and alternatively submitting an additional response to the State Board's substantive arguments. The Employer's motion to reject the State Board's letter as untimely is denied.

In pertinent part, the petition, memorandum, and opposition allege as follows:

1. There is pending before the State Board a representation petition, Case SE-53592, filed by Office & Professional Employees International Union, Local 153, AFL-CIO, herein called the Union, seeking to be certified as the collective-bargaining representative of the Employer's secretaries, bookkeepers, and computer section employees.¹

2. The Employer, a private, not-for-profit membership corporation, is a real estate industry association consisting of dues-paying members who own rent-stabilized apartment buildings in New York City.² It provides various services to its members and the public. Informational and counseling services are provided to tenants who have questions or problems, seminars are given to owners of rent-stabilized buildings, and bulletins and publications are distributed to the public and its members. During 1980, a representative year, the Employer's gross revenues which are derived entirely from membership dues were in excess of \$4 million, while the value of goods and services furnished directly to it

from outside the State of New York exceeded \$200,000.

3. The thrust of the State Board's opposition to the Board's assumption of jurisdiction herein is that the Employer is not engaged in commercial activity within the meaning of the National Labor Relations Act. It points out that the Employer neither operates nor manages real estate and that it was organized pursuant to the Rent Stabilization Law to provide rent regulation within the city of New York. The statute enables all interested landlords to provide voluntary self-regulation, by the promulgation of city-approved rules and regulations, guarding against excessive rent increases. The Employer also funds a conciliation and appeals board, a separate and distinct quasi-judicial agency whose members are appointed by the mayor of the city of New York and which resolves disputes over claims of hardship in rent increases.³

4. The Union neither admits nor denies the aforesaid commerce data and the State Board has not made any findings with respect thereto. The State Board has advised that it has not agreed to hold its proceedings in abeyance pending a Board decision on the jurisdictional issue herein.

5. There is no representation or unfair labor practice proceeding involving the same labor dispute pending before this Board.

6. Although served with a copy of the petition herein, the Union has not filed a response as permitted by the Board's Rules and Regulations.

On the basis of the foregoing, the Board concludes that:

1. The Employer is a not-for-profit real estate industry association which does not operate or manage real estate, but does supply various services to the public and to its thousands of members who own rent stabilized apartment buildings in the city of New York. Its annual gross revenue of more than \$4 million not only meets the Board's \$500,000 discretionary standard for assertion of jurisdiction over residential real estate,⁴ but also exceeds the Board's maximum monetary standard of \$1 million for assertion of jurisdiction.⁵ In addition, the more than \$200,000 annual interstate inflow of goods and services furnished the Employer directly from outside the State of New York establishes the Board's legal jurisdiction. Thus, the Employer's operations are sufficient to meet any of the Board's

¹ On February 9, 1981, the State Board certified the Union as the representative of the Employer's receptionists, mailroom employees, intervenors/interviewers, and membership counselors in Case SE-53043.

² The Employer has 20,000 members who own 900,000 apartments in 43,000 buildings.

³ The State Board asserts that this quasi-judicial board was found to be a political subdivision within the meaning of Sec. 2(2) of the Act and exempt from Board jurisdiction. (*New York City Conciliation and Appeals Board and Local 8 of I.B.T.*, Case 2-RC-18368.)

⁴ *Karl Gerber, Max Taetle, Nathan Metz & Estate of Bernard Katz, Co-Partners d/b/a Parkview Gardens*, 166 NLRB 697 (1967), and *James Johnston Property Management*, 221 NLRB 301 (1975).

⁵ See, e.g., Board Rules and Regulations, Secs. 103.1 and 103.2.

self-imposed jurisdictional standards. However, the State Board argues that the Employer is not engaged in commercial activity. We do not agree. To the extent that the Employer is rendering services to its member-owners of rent-stabilized apartment buildings, it is an adjunct to, and a part of, the real estate industry whose operations were found, in *Parkview, supra*, to have a substantial impact on commerce. As such, its services must be considered as principally promoting and advancing commercial activities in the real estate industry of New York City, thereby warranting the assertion of jurisdiction over the Employer.⁶

Accordingly, the parties are advised, under Section 102.103 of the Board's Rules and Regulations,

⁶ See *Middle Department Association of Fire Underwriters*, 122 NLRB 1155 (1959); *The New York Board of Fire Underwriters*, 193 NLRB 551 (1971); *Legal Services for Northwestern Pennsylvania*, 230 NLRB 688 (1977); *American Arbitration Association, Inc.*, 225 NLRB 291 (1976); and *Wurster, Bernardi & Emmons, Inc.*, 192 NLRB 1049 (1971). See also *Montgomery County Opportunity Board, Inc.*, 249 NLRB 880 (1980), and *Mexican American Unity Council, Inc.*, 207 NLRB 800 (1973).

Series 8, as amended, that, based on the allegations made herein, the Board would assert jurisdiction over the operations of the Employer with respect to labor disputes cognizable under Sections 8, 9, and 10 of the Act.

CHAIRMAN FANNING, dissenting:

I would dismiss the petition for advisory opinion herein as I believe it goes beyond the intendment of that procedure. The basic purpose of advisory opinions is to advise parties officially whether or not an employer comes within our discretionary jurisdictional standards. *Pennsylvania Labor Relations Board* (George Junior Republic), 215 NLRB 323 (1974). The issue here is whether or not the employer is engaged in commercial activities, a considerably broader question, and one I am not inclined to answer in its present posture. See, e.g., *Leisure Village Association, Inc.*, 236 NLRB 102 (1978).